

## INTERNAL REVENUE SERVICE

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The Honorable James T. Walsh  
Member, U.S. House of Representatives  
P.O. Box 7306  
Syracuse, NY 13261

Attention: Kimberly Kemp

Dear Congressman Walsh:

This letter is in response to your inquiry dated October 2, 2000, to the Director, Legislative Affairs, on behalf of your constituent, [REDACTED]. You enclosed copies of previous correspondence on this matter addressed to the Internal Revenue Service, Washington, D.C. Although my office has jurisdiction of this matter, adoption expenses, we have no record of receiving the prior inquiries submitted by, or on behalf of, [REDACTED].

Your constituent asks whether adoption expenses paid in 1991 through 1993 may be claimed in 2000, even though the adoption did not take place because the birth mother changed her mind and kept the baby.

Section 23 of the Internal Revenue Code allows a credit for qualified adoption expenses. Generally, for qualified adoption expenses paid before the taxable year in which the adoption became final, the credit is allowed for the year following the year in which the expenses are paid. The credit is allowed even if the adoption did not become final. However, if the child is not a citizen or resident of the United States, no credit is allowed unless the adoption is final.

Generally, a taxpayer may claim a credit or deduction not previously claimed by filing, within prescribed time limits, Form 1040X and any other appropriate forms for the year in question. However, § 23 was effective for tax years beginning after December 31, 1996, and no comparable provision existed in the Code for prior years. Thus,

expenses paid in 1991 through 1993 do not qualify for the adoption credit. The enclosed copy of Publication 968, Tax Benefits for Adoption, gives further details.

I hope this information is helpful. Please call John T. Sapienza, Jr., Identification Number 50-6383, at (202) 622-4920, if you have any questions.

Sincerely,

Heather C. Maloy  
Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure